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June 26, 2007

To the Honorable Committee on Public Safety  
Room 205, City Hall

Re: Common Council File No. 070237/An ordinance relating to residency  
restrictions and loitering regulations for sex offenders

Dear Committee Members:

We have worked with the Legislative Reference Bureau on the attached draft ordinance, and we are prepared to sign the file as legal and enforceable.

It is important to note that courts around the country have been divided on the legality of the various sex-offender residency requirements they have reviewed. There is no court decision in Wisconsin on this issue. Therefore, the proposal is certainly susceptible to legal challenge. This office can, in good faith, defend against such a challenge, although ultimate success is difficult to predict.

It is also important to emphasize the need to develop a complete record justifying the restrictions placed on sex offenders (i.e. the likelihood of repeat offenses against children). Maps are essential so that notice of the available residential areas is clearly given to the offenders, as well as to any court making a placement.

The draft ordinance would prohibit certain sex offenders from living within in 2000 feet of specified places where children congregate, absent a judge's order specifically exempting a particular offender. The ordinance reaches sex offenders whose offenses involved a child (under 17), and particularly violent sex offenders. The draft also permits a police officer to question a sex offender who is loitering in certain locations. In our opinion, this approach is legally defensible, and most

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closely resembles the law approved by the Eighth Circuit Court of Appeals in *Doe v. Miller*, 405 F.3d 700 (2005), while still attempting to protect children from danger. We have been discussing this issue with other municipal attorneys, and we believe that a number are considering drafts similar to the one attached.

We wish to inform you that the Wisconsin Department of Corrections staff has stated their concern that ordinances like this may result in many sex offenders going "underground," by refusing to register or obtain necessary treatment, thereby avoiding detection of their actual residences. The DOC states that this may pose a public safety threat. The DOC staff has also indicated that the state Legislature may be poised to adopt state-wide regulations addressing the issue of protecting children from sex offenders, and may do so in away that would preempt local regulation.

Very truly yours,



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